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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65931; File No. SR-NASDAQ-2011-168)

December 9, 2011

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Option Fee Disputes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 30, 2011. The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to amend Rule 7056 entitled "NASDAQ Options Fee Disputes" to specify that the Options Regulatory Fee is subject to Rule 7056.

The text of the proposed rule change is set forth below. Proposed new text is italicized and deleted text is in brackets.

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**7056. NASDAQ Options Fee Disputes**

(a) All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation.

(b) All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(c) This Rule applies to the following NASDAQ Options Market fees:

(1) Rule 7050 “NASDAQ Options Market - Fees”; [and]

(2) Rule 7053 “NASDAQ Options Market - Access Services,” with the exception of the TradeInfo Fee[.]; and

(3) Rule 7059 “NASDAQ Options Regulatory Fee.”

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The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend Rule 7056 entitled “NASDAQ Options Fee Disputes” to list Rule 7059 entitled “NASDAQ Options Regulatory Fee” as a fee subject the fee dispute Rule.<sup>3</sup> Currently, Rule 7056 requires NOM Participants to submit all fee disputes to the Exchange in writing<sup>4</sup> and accompanied by supporting documentation within sixty days of receipt

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<sup>3</sup> The Exchange recently filed a proposed rule change to adopt an Options Regulatory Fee operative on January 3, 2012. See SR-NASDAQ-2011-163.

<sup>4</sup> The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

of an invoice.<sup>5</sup> Exchange Rule 7056 applies to the fees in Rule 7050 entitled “NASDAQ Options Market” and Rule 7053 entitled “NASDAQ Options Market – Access Services” with the exception of the TradeInfo Fee. The Exchange is now proposing to also apply Rule 7056 to the Options Regulatory Fee.<sup>6</sup>

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. The Exchange believes that NOM Participants should be aware of any billing errors within two months of receiving an invoice. The Exchange provides NOM Participants with the ability to sign-up to receive certain daily reports.<sup>7</sup> These reports allow NOM Participants to view trade data and fees prior to receiving a billing invoice. In addition, NOM Participants have access to a password protected website, which provides NOM Participants an electronic copy of current and historical invoices, as well as the supporting details for assessed charges.<sup>8</sup> NOM Participants have the ability to retrieve trade information from this website on a T +1 basis.

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<sup>5</sup> Rule 7056 will be operative on January 3, 2012 and would first apply to invoices related to transactional billing in January 2012 and would apply thereafter. See Securities Exchange Act Release No. 65718 (November 9, 2011), 76 FR 71088 (November 16, 2011) (SR-NASDAQ-2011-147).

<sup>6</sup> NASDAQ OMX PHLX LLC (“Phlx”) applies the same fee dispute rule to its Options Regulatory Fee. See Phlx’s Fee Schedule.

<sup>7</sup> These reports include, but are not limited to, daily traded against report and daily cancel fee reports.

<sup>8</sup> The website is MyNASDAQOMX.com. See Options Trader Alert #2011-60.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform practice for disputing fees.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to impose a requirement on the ORF, similar to other fees, concerning fee disputes. The Exchange believes the requirement that all fee disputes, for certain specified fees, must be submitted to the Exchange within sixty days from receipt of the invoice is reasonable because the Exchange provides ample tools to properly and timely monitor and account for various charges incurred in a given month.<sup>11</sup> The proposal is equitable and not unfairly discriminatory because it equally applies to all NOM Participants who have the ability to access various reports, which include the information concerning ORF. Phlx has a similar rule which is applicable to its ORF fees.<sup>12</sup> Also, the Exchange's administrative costs would be lowered as a result of this policy.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> The Exchange provides NOM Participants with the ability to sign-up to receive certain daily reports. These reports allow NOM Participants to view trade data and fees prior to receiving a billing invoice.

<sup>12</sup> See Securities Exchange Act Release No. 62661 (August 6, 2010), 75 FR 49544 (August 13, 2010) (SR-Phlx-2010-110). See also Phlx's Fee Schedule.

competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-168 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NASDAQ-2011-168 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).